MSS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

CRIMINAL APPEAL NO. 601 OF 1996

THE STATE OF MAHARASHTRA )
(At the instance of Shri G.V. Bapat, Food Inspector, in the office of the Jt.Commissioner (Mumbai Division) Food and Drug Administration, Maharashtra State, Chandani Cross, Shivaji Path, Thane ) .. APPELLANT (Org. Complainant)

VERSUS

1. SUKHLAL JERJI JAIN )
   Vendor and )
2. HIRLAL SUKHLAL JAIN )
   Partner of )
3. N/s. BHARAT TRADING CO. )
   situated at Manar Road, )
   Dist. Thane. ) .. RESPONDENTS

Mr. Y. S. Shinde, APP

Ms. Dhanashree Shinde h/f N. V. Gangal for respondents.

**CORAM**: **SMT. RANJANA DESAI, J.**

**DATE**: OCTOBER 29, 2007.

ORAL JUDGMENT:

. Respondents (For brevity "original accused 1,2 & 3") respectively were tried in the Court of Jt. Civil Judge, Junior Division, and Judicial Magistrate First Class at Palghar in Summary Criminal Case No. 142 of 1984 for offence under Section 7(i) read with S. 2(1a)(m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 ("the said Act" for short). In the impugned order it is stated that accused 4 to 6 were not served with summons and, therefore, the learned Magistrate separated the trial of accused 4 to 6. In the circumstances, only accused 1 to 3 were tried for the above offence.

2. By the impugned judgment and order the learned Magistrate acquitted them. While acquitting them he observed that the case shall proceed against accused 4,5 and 6. Being aggrieved by the judgment and order of accquittal the State of Maharashtra has preferred this appeal.

3. According to the prosecution accused 1 and 2 are partners of accused 3 firm. Accused 4 and 5

are partners of accused 6. Accused 1,2 and 3 are doing business of storing for sale and selling food articles at Palghar. Accused 4 to 6 are doing business of manufacturing, for sale, distributing for sale and selling chilly powder and spices at their manufacturing premises at Vapi, Gujarat State. Accused 1 to 3 hold valid licence for dealing in food articles under the said Act.

4. According to the prosecution, Food Inspector G. V. Bapat visited the shop of accused 1 to 3 on 7/2/83 at about 4-30 p.m. along with independent witness namely Hamchand Rathod and Mr. S. G. Kubde, the Food Inspectors. Accused 1 Sukhlal Jorji Jain was present in the shop premises. The complainant disclosed his identity and his intention of drawing sample of food articles. He demanded and purchased 750 grams of chilli powder from three sealed plastic bags bearing labels as "Famous for quality and reliability Rajhans Brand chilly powder, date of manufacturing January 1983. Maximum Retail Price Rs.5.00ps. (Local tax extra). Weight when packed 250 grams. Product of India Shree Mahalaxmi Spices products, G.I.D.C. Vapi, Gujarat". The Food Inspector paid cost of Rs.15/- to the accused and obtained the receipt from him.

Notice under Section 14A of the said Act was given to the accused and acknowledgement of the accused was taken on the reverse of the said notice. The sample was divided into three equal parts in clean dry and empty polythene bags. After following due procedure, the samples were sealed and labelled in the presence of panchas and panchnama was drawn. The complainant sent sample to the Public Analysts Pune along with Form-VII for test and analysis in the sealed packet. Remaining two sample parts were sent to Local Health Authority, Assistant Commissioner, Food and Drugs Administration, Maharashtra State, Thane. Form VI dated 7/2/83 together with covering letter was sent to the supplier i.e. accused 6 by Registered Post.

5. PW 1 G. V. Bapat, the complainant received Public Analyst's report from Local Health Authority on 11/3/83. That sample did not conform to the standards of chilli powder. PW 1 submitted the relevant papers to the Commissioner, Bombay Division for consent for prosecution. The necessary consent was accorded and the complaint came to be filed.

6. Accused 1 to 3 were served. As stated

hereinabove, accused 4 to 6 were not served and, therefore, their case was separated. In support of its case the prosecution examined PW 1 Mr. G.V. Bapat the Food Inspector and PW 2 Hamchand Rathod, the pancha witness who has turned hostile. The defence of the accused was one of denial. According to them in any case they are entitled to benefit of the provisions of Section 19(2) of the said Act. They also contended that the Food Inspector had not followed the proper procedure and that consent was accorded mechanically. After perusing the evidence, the learned Magistrate acquitted the accused as aforesaid and hence this appeal by the State of Maharashtra.

7. I have heard at some length Mr. Shinde, learned APP for the State. He contended that the evidence of PW 1 G. V. Bapat and the report of the Public Analyst completely support the prosecution case. He submitted that the learned Magistrate should have, therefore, sentenced the accused. He submitted that the impugned judgment and order is perverse and must be set aside.

8. As against this Ms. Shinde learned advocate appearing for the accused submitted that the

impugned judgment and order is well reasoned and merits no interference from this Court. She submitted that the appeal be dismissed.

9. Before I deal with the evidence and the rival contentions, I must refer to a very disturbing fact. In paragraph 7 of the judgment the learned Magistrate has noted that the record of the case is missing. He has stated that the original complaint, panchnama, consent order and deposition of the complainant in English is not in the record.

10. On 10/3/97 the Division Bench of this court had directed learned Magistrate to make a report to this court within two weeks from the receipt of the writ of this court regarding the action taken in respect of the missing records. Accordingly the learned Magistrate has submitted his report dated 4/4/1997. According to him one Sharad Nikam and Smt. P. A. Arekar, Senior Clerks appeared to be responsible for missing documents. It appears that thereafter enquiry was conducted. But the enquiry officer exonerated the delinquents. The report of the enquiry officer was accepted by the then District Judge Thane. The learned Magistrate has observed in the impugned judgment that because

documents could not be traced learned APP Shri Dalimbkar closed the case and the judgment was delivered in respect of accused 1, 2 and 3.

11. The manner in which this case has proceeded depicts a very sorry state of affairs. Accused 4 to 6 have not been served. Case of accused 1 to 3 was separated. Because the record was not available, learned APP has closed the case. This could have been avoided, if the record was preserved properly by the trial court. I can only express unhappiness about the conduct of the case for nothing can be done now in a case of 1983 in the above circumstances.

12. Accused 4 to 6 are in fact the manufacturers of chilly powder which was found in the shop premises of accused 1 to 3. It is clear from the record that the packets which were lying in the shop premises of the accused were in sealed condition. They were opened by the Food Inspector and samples were drawn from it.

13. Section 19(1) of the said Act states that it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or

misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

14. Section 19(2) is material it reads thus;

. "19(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food, if he proves:-

. (a) That he purchased the article of food -

. i) In a case where a licence is prescribned for the sale thereof, from a dulylicensed manufacturer, distributor or dealer.

. ii) In any other case from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

. (b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it."

15. A vendor can prove that he purchased the article of food from a duly licensed manufacturer, distributor or dealer and that he had stored the article properly and, if he proves that he shall not deem to have committed any offence pertaining to the sale of any adulterated or misbranded article of food.

16. Admittedly accused 1 to 3 were holding licence for sale of food articles. It is the case of the complainant that he collected the sample from three sealed packets. Therefore, storing done by accused 1 to 3 cannot be faulted. The packets were in a sealed condition. The labels on the packets showed that the bags were purchased from Mahalaxmi Spices Products G.I.D.C. Vapi, Gujarat. Therefore, if accused 4 to 6 are licenced manufacturers possibly liability cannot be fixed on accused 1 to 3. In such a situation Section 19 (2) would come in operation. It was, therefore, necessary for the prosecution to secure presence of accused 4 to 6. In the absence of accused 4 to 6, accused 1 to 3 could not have been held responsible for the alleged adulteration in the facts of this case where the samples were drawn from sealed packets.

Possibility of accused 4 to 6 selling adulterated sealed packets to accused 1 to 3 cannot be ruled out.

17. Besides apart from the evidence of F. I. G.V. Bapat, there is no other supporting evidence. The pancha has turned hostile. In the circumstances the view taken by the trial court is a reasonably possible view.

18. It is well settled that in an appeal against acquittal, unless the impugned judgment and order is perverse, the High Court should not interfere with it. It is equally well settled that the presumption of innocence of the accused is further strengthened by the judgment and order of acquittal and therefore, great care should be taken by the High Court while disturbing the acquittal. If the view taken by the trial court is a reasonably possible view, the High Court should not substitute it with some other view merely because that other view is also possible.

19. Keeping these principles in mind, I am of the opinion that no interference is necessary with the impugned judgment and order. The appeal is,

therefore, rejected.

JUDGE.

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**CORAM**: **SMT. RANJANA DESAI, J.**

**DATE**: OCTOBER 29, 2007.

OPERATIVE PART OF THE ORDER

. For the reasons stated in the oral judgment,

this court has dismissed the appeal.

JUDGE.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

CRIMINAL APPEAL NO. 601 OF 1996

**DATE OF DECISION**: 29/10/2007

Submitted for
approval.

**THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:**

**THE HON'BLE SHRI JUSTICE :**

1. Whether Reporters of Local Papers be allowed to see the Judgment? )

2. To be referred to the Reporters or not? )

3. Whether Their Lordships wish to see the fair copy of the Judgment? )

4. Whether this case involves a )

substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder? )

5. Whether it is to be circulated to the Civil Judges? )

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices? )